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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Federal-State Joint Board on Universal Service )

**PALMERTON TELEPHONE COMPANY** )  
**NORTHEASTERN PENNSYLVANIA** )  
**TELEPHONE COMPANY** )

CC Docket No. ~~96-45~~

Petition for Waiver of Section 54.301(e)(1) Submission Date )  
For True-Up 2006 Local Switching Support Data )

To: Chief, Wireline Competition Bureau

**PETITION FOR WAIVER – EXPEDITED ACTION REQUESTED**

ICORE, Inc., on behalf of Palmerton Telephone Company ("Palmerton") and Northeastern Pennsylvania Telephone Company ("Northeastern PA"), and pursuant to Section 1.3 of the Commission's Rules<sup>1</sup>, requests waiver of the December 31, 2007 date established by Section 54.301(e)(1) of the Rules for submission of a true-up adjustment for Local Switching Support ("LSS") data for the 2006 calendar year. Due to a miscommunication between ICORE and NECA, both companies failed to provide their 2006 LSS true-up data to the Universal Service Administrative Company ("USAC") no later than 12 months after the end of such calendar year. Both companies have since provided their true-up data to USAC by facsimile on May 20, 2008, and also by a Federal Express delivery. As described herein, a waiver of the filing deadline is justified.

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<sup>1</sup> 47 C.F.R. § 1.3

## **I. Background**

Northeastern PA is a rural incumbent local exchange carrier ("ILEC") which serves eight local exchanges in Susquehanna County in rural northeastern Pennsylvania. As of April 2008, Northeastern PA served 11,947 access lines in its single Pennsylvania study area (Study Area Code 170191). Palmerton is a rural incumbent local exchange carrier which serves four local exchanges in Carbon County in rural eastern Pennsylvania. As of April 2008, Palmerton served 10,580 access lines in its single Pennsylvania study area (Study Area 170196).

Both companies were designated as an ETC by the Pennsylvania Public Utility Commission in 1997. They both have been submitting LSS data and other federal High Cost Support forms and reports in a timely fashion, since these filing requirements were established during the implementation of the Telecommunications Act of 1996. Neither company has ever previously missed a federal universal service filing deadline, or had a federal universal filing returned as defective or incomplete. Both companies' federal universal service data filings and reports have historically been prepared and filed by either their consultant, ICORE, when the companies were out of the NECA pool or by the National Exchange Carrier Association ("NECA") when the companies were part of the NECA pool. For the reasons described below, Northeastern PA and Palmerton Telephone Company did not submit their 2006 LSS true-up data to USAC in time to comply with the requirements of §54.301(e)(1).

Northeastern PA and Palmerton's 2006 LSS true-up data was filed late due to a unique set of circumstances involving pool participation and miscommunication between ICORE and NECA. It wasn't until Monday, May 5, 2008<sup>2</sup> that both companies were notified that their 2006 LSS true-up data was never received by USAC. And it was only through the monthly NECA

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<sup>2</sup>Although according to the FCC rules, Section 54.301(e)(2)(iv), USAC shall adjust each carrier's LSS payment no later than 15 months after the end of the calendar year for which historical data is submitted (March 31, 2008) .

Disbursement Notification sheet, that both companies were made aware that there was a problem after seeing a Local Switching Support adjustment of over \$300,000 due to USAC for each company.

Both companies immediately called their consultant, ICORE to determine whether this was an error. According to ICORE's calculations the companies did not owe these funds back to USAC. ICORE staff initially thought that NECA had made the 2006 LSS true-up filing on behalf of these two companies, as they do for all Traffic Sensitive member companies and that there had to be some sort of mistake in the calculation. ICORE staff immediately contacted NECA staff to discuss the problem.

After discussions with NECA staff, ICORE was made aware that NECA did not provide USAC with Northeastern PA and Palmerton's 2006 LSS true-up data. NECA stated that it did not file this data because neither company was a member of the NECA Traffic Sensitive Pool in 2006 and that NECA did not have the companies' 2006 data in order to complete the filing. The first half of this statement is true. Both companies were not members of the NECA Traffic Sensitive Pool in 2006. However, both companies were members of the NECA Carrier Common Line Pool in 2006 and NECA did, in fact, have the 2006 LSS data needed to complete the filing. The three elements of data (access minutes, access lines, and number of exchanges) required to complete the average schedule LSS filing are the same three elements of data reported to the Common Line Pool every month. Since both companies are average schedule companies, the LSS data request is much more basic than the cumbersome LSS data request for cost companies. If these companies were cost companies, NECA would not have had all of the cost data necessary to file the LSS data request because it is much more involved.

It was ICORE's belief that since Northeastern PA and Palmerton re-entered the NECA Traffic Sensitive Pool effective June 30, 2007, that NECA would prepare and file any future LSS data requests with USAC. NECA did prepare both companies' projected 2009 LSS data request and filed it with USAC on October 1, 2008. Therefore, ICORE staff thought that since both companies were now back in the Traffic Sensitive pool it was NECA's responsibility to file any future LSS data requests with USAC.

After discussing these points with NECA, ICORE learned that this is not NECA's standard procedure. If, however, ICORE would have contacted NECA prior to the December 31, 2007 deadline to confirm that NECA was filing the 2006 LSS true-up for Northeastern PA and Palmerton, NECA would have included these two companies in their filing. So, in essence, this miscommunication between ICORE and NECA is the reason this 2006 LSS true-up adjustment was never filed. NECA did agree to contact USAC on behalf of Northeastern PA and Palmerton, to see if they could resolve this issue with USAC. USAC representatives informed NECA that USAC will not process either companies' 2006 LSS true-up adjustment unless and until the Commission grants a waiver of Section 54.301(e)(1) filing date.

Northeastern PA and Palmerton have since proceeded to fax the completed 2006 LSS true-up submission to USAC's designated facsimile number for LSS forms on Tuesday, May 20, 2008. A paper copy of the data submission, together with a signed certification by both companies, was also sent to USAC's Piscataway, New Jersey office via Federal Express priority envelope on Tuesday, May 20, 2008.

ICORE notes again that both companies have complied fully and in timely fashion with all federal universal service filing requirements and deadlines since the 1996 Act was implemented. The delay in submitting Northeastern PA and Palmerton's 2006 LSS true-up was

due ultimately to the unique set of circumstances involving pool participation and miscommunication. Northeastern PA and Palmerton take the lapse in reporting seriously and ensure this will never happen again. ICORE has communicated with NECA on future 2007 LSS true-ups and NECA has informed ICORE that they will be submitting this filing for Northeastern PA and Palmerton.

## **II. Basis for Relief**

Section 1.3 of the Rules permits the Commission's rules to be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest<sup>3</sup>. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of public policy on an individual basis<sup>4</sup>. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. Northeastern PA and Palmerton submit that the circumstances that lead to the instant request be considered sufficient to warrant the grant of the requested waiver.

### **A. Special Circumstances Provide Good Cause For Waiver**

In *Smithville Telephone Company, Inc*<sup>5</sup>, the Telecommunications Access Policy Division of the Wireline Competition Bureau granted a rural telephone company a waiver of the October 1, 2003 deadline for the filing of its projected 2004 LSS data. The Division found that the death of the company's president on September 8, 2003, and subsequent management changes gave rise to substantial turmoil which led to an oversight and inadvertent failure to meet the October 1 deadline, and that the absence of the company's regulatory accountant for a substantial portion of

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<sup>3</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)

<sup>4</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)

<sup>5</sup> 19 FCC Rcd 8891 (WCB May 18, 2004)

November and December 2003 due to illness contributed to further delays in the discovery of the missed deadline until February 10, 2004. The Division found that, in light of these special circumstances, it would be onerous to deny LSS to the rural telephone company for an entire year<sup>6</sup>. It also found that the special circumstances affecting the company outweighed any processing difficulties that USAC might face as a result of the late filing (in that case, more than four months)<sup>7</sup>.

The special circumstances affecting Northeastern PA and Palmerton are quite different than those found to constitute good cause for waiver of Section 54.301(b) in the *Smithville Telephone Company* order. But like *Smithville*, Northeastern PA and Palmerton moved to rectify the problem immediately upon notification. For these reasons alone, the Section 54.301(e)(1) requested by both companies should be granted.

In addition, Northeastern PA and Palmerton's spotless record of compliance with USAC reporting obligations should also factor into the FCC's assessment of this waiver request. Both have never previously missed a USAC deadline. The Commission found this to be a consideration in the recently granted waiver request of *Citizens Communications and Frontier Communications*<sup>8</sup>. Like Frontier, Northeastern PA and Palmerton's delay in filing was caused by unique circumstances, was brief, and the error was promptly cured and did not create a hardship for USAC or other fund recipients.

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<sup>6</sup> Id at ¶ 5.

<sup>7</sup> Id

<sup>8</sup> Citizens Communications and Frontier Communications Request for Review of a Decision of the Universal Service Administrator and Petition for Waiver of FCC Rule Section 54.802(a), Order Released October 27, 2005.

## **B. Injunctive Relief**

Northeastern PA and Palmerton further note that USAC has stated in its Comments in WC Docket No. 05-195 that some carriers have "over-projected" their LSS for the next calendar year in their Section 54.301(b) filings and that some carriers have failed to submit their actual LSS true-up data by the Section 54.301(e) deadline<sup>9</sup>. However, USAC states that it currently accepts late-filed Section 54.301(e) true-up submissions to preclude all LSS support received by the ILEC from being rescinded. Unfortunately, this practice is either no longer in place or is contradicted in this current case. USAC advised ICORE that it is USAC's practice to withhold all currently due high cost funds (Local Switching Support as well as Interstate Common Line Support) from these two companies until their entire projected 2006 LSS amounts have been paid back to USAC. USAC also suggested in their Comments that in order to provide carriers an incentive to file true-up data, the Commission may wish to consider establishing a penalty when a carrier does not file its true-up data by the December 31, deadline. ICORE does not currently find in the Commission's rules any penalty for failing to file LSS true-up data.

The loss by Northeastern PA of approximately \$382,123 in expected LSS for 2006 and \$324,354 by Palmerton will be extremely onerous and disruptive, particularly because the company had no offsetting reductions in its 2006 local switching costs. The purpose of the LSS universal service program is to provide cost recovery to small LECs for the costs of their switching investment and expenses. As such, LSS has been a substantial portion of Northeastern PA and Palmerton's recovery of its switching costs for many years. The continued availability of LSS ensures that companies are not required to recover these relatively higher costs through intrastate, basic rates. As such, LSS thereby avoids potentially higher basic rates that would be

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<sup>9</sup> *Comments of Universal Service Administrative Company*, WC Docket No. 05-195, *et al.*, October 18, 2005, page 158.

contrary to the established universal service principles of affordability and comparability. Northeastern PA and Palmerton are likely to have no choice but to offset such a substantial revenue loss by significantly increasing its other revenue streams or by significantly decreasing its investment outlays. In either case, such offsets will have an adverse impact (in the short term and/or the long term) upon Northeastern PA and Palmerton's ability to provide quality services to its rural customers at affordable rates reasonably comparable to those in urban areas in accordance with the Commission's Universal Service goals.

ICORE makes a request to the FCC that until this waiver is granted, USAC would adhere to a temporary injunction from requiring these companies to pay back their 2006 LSS projected funds.

### **III. Request for Expedited Action**

Unless and until the Commission grants these waiver requests, Northeastern PA and Palmerton will be forced to forego their 2006 LSS cost recovery revenues. This support is needed and used by both companies to support their ongoing costs and capital improvements to upgrade their networks and to provide advanced services. The required data has already been submitted to USAC, and it appears that USAC is fully capable of incorporating this data as a late-filed true-up. Northeastern PA and Palmerton request expedited action by the Commission so that USAC can be properly notified as soon as practical so that future settlements will reflect accurate LSS cost recovery.



#### IV. Conclusion

Northeastern PA and Palmerton regret that their 2006 LSS true-ups were filed after the due date, and have taken steps to ensure this will not happen again. For the reasons stated herein, Northeastern PA and Palmerton submit that good cause has been shown for the grant of the requested waiver as set forth herein. Grant of the waiver will allow these companies to receive LSS disbursements for the year 2006 consistent with the statutory goal of preserving and advancing universal service for the rural customers served by the company. This result will be consistent with the public interest. Expedited action is requested to minimize the time that Northeastern PA and Palmerton will be prevented from receiving LSS cost recovery support that they expected to receive. Without the LSS support, it will be the customers of Northeastern PA and Palmerton that will be burdened with potential rate changes, curtailed upgrades, or delays in the availability of advanced services. With the grant of the waiver, Northeastern PA and Palmerton will merely receive the LSS that was intended under the universal service plan policies, and the grant of the waiver will not adversely affect any other carrier or customer.

Respectfully submitted,  
NORTHEASTERN PENNSYLVANIA  
TELEPHONE COMPANY  
PALMERTON TELEPHONE COMPANY

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